ALABAMA POWER CO. *v.* ICKES, FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Nos. 84 and 85. Argued December 6, 7, 1937.—Decided January 3, 1938.

1. An electric power company, operating in Alabama under a non-exclusive franchise, sued to enjoin the performance of agreements whereby a federal official purporting to act under Title II of the National Industrial Recovery Act, as amended, undertook on behalf of the United States to make loans and grants of money to several Alabama municipalities to assist each of them, respectively, in constructing an electrical distribution system within its municipal limits. *Held* that the company had no standing to question the validity of the loans and grants under the federal statute, or the validity of the statute in that regard under the Federal Constitution, since the only damage threatening the company was the damage of lawful competition—*damnum absque injuria*. Pp. 478, 479.

   According to the findings in the cases each of the municipalities had authority to construct and operate its proposed plant and distribution system in competition with the company, and to borrow money for that purpose, and had determined to do so of its own free will; no conspiracy was involved, nor any desire to cause injury or financial loss to the company, nor purpose to regulate rates or foster municipal ownership of utilities. Neither the United States nor any of the respondent-officers had reserved any right to require an elimination of competition or designate any agency from which the municipality must purchase its power. Each municipality was left entirely free from federal control or direction in respect of the management and control of its plant and business.

2. Findings of the District Court, made after hearing, supported by substantial evidence, and not questioned by the intermediate appellate court, *held* unassailable in this Court. P. 477.
3. The interest of a taxpayer in the moneys of the federal treasury affords him no status to enjoin expenditures upon the ground that they are for an unconstitutional purpose. P. 478.

4. Courts have no power to enjoin the execution of an Act of Congress upon the ground of unconstitutionality, where no wrong directly resulting in the violation of a legal right is presented in a justiciable issue. P. 479.

67 App. D. C. 230; 91 F. (2d) 303, affirmed.

CERTIORARI, 301 U. S. 681, to review decrees affirming the dismissal of bills brought against the Emergency Public Works Administrator and other Government officials to restrain the making of loans and grants of money to certain municipalities in Alabama, in aid of the construction of municipal light and power plants. These cases were consolidated and tried with others which later became moot. No. 84 also became moot in so far as it related to three of the municipalities originally named in the bill. The opinion of the District Court is in LXIV Wash. L. Rep. 563.

Mr. William H. Thompson, with whom *Messrs. Perry W. Turner, Newton D. Baker, R. T. Jackson, Dean Acheson, Thomas V. Koykka, Wayne G. Cook* and *J. Harry Covington* were on the brief, for petitioner.

I. The petitioner has shown facts which entitle it to question the legality of the respondents' acts.

The respondents have argued in the lower courts that the test of whether they owe a duty to the petitioner to refrain from the acts threatened—admitting for the purpose of this argument that they are unauthorized—is whether private individuals would incur liability from committing them. They argue that the respondents, stripped of legal authority, are merely private individuals and that the rights and duties of the parties must be determined by principles applicable in suits between one private individual and another.

The argument is as unsound in principle as it is opposed to authority. In many cases the act of the officer, if unauthorized, would fit into such common forms of action as trespass, but in a great and growing field of activity an officer acting under color of authority is not acting as a private person, the consequences of his acts are not the same as those of a private person, and no private person could conceivably propose to act in the same way. In short, the argument is wholly verbal and unrealistic.

But the error in principle goes deeper. The argument assumes that the legal principles determinative of the standing of the plaintiff to question the legality of acts of a public officer should be those which have been evolved to determine rights to *recover* against a *private* person. Nothing could be more fallacious. The principles determining the right to recover against private persons are the result of long and careful evaluation of the conflicting interests of private persons. A rule of law which makes the difference between victory for the plaintiff and victory for the defendant represents the accumulated wisdom of courts and legislatures as to how private persons should live together and how loss, as between them, should be borne. These issues involve basic considerations of policy; but to make that same policy determinative of the right to question the statutory authority of a public officer disregards vital differences.

The considerations which should be, and have been, determinative with courts in formulating the principles affecting the right of private persons to question the authority of public officers are the necessity of affording protection against injury resulting from abuse of authority, while avoiding officious and burdensome litigation, and the assertion of fanciful wrongs and insubstantial injuries. Recognizing, as they should and must, this vital difference in the function and purpose of the rules involved in determining when a plaintiff may question the authority of a public officer and when he may recover from another private individual, courts have not, as respondents argue, blindly confused the two, but in determining the former have referred to the latter merely as a guide, by analogy, to types of injuries to plaintiffs of which the law will take note. See *Ex parte Young,* 209 U. S. 123.

In *Philadelphia Co.* v. *Stimson,* 223 U. S. 605, 621, the Secretary of War, if he had been a private citizen, would have incurred no liability by threatening suits to enforce a harbor line which he had drawn. Similarly private persons would have owed no duty to the plaintiff which would have been violated by the acts threatened by the public officers in *Pierce* v. *Society of Sisters,* 268 U. S. 510 or *Terrace* v. *Thompson,* 263 U. S. 197, or *Hammer* v. *Dagenhart,* 247 U. S. 251, or *Truax* v. *Raich,* 239 U. S. 33.

In *Santa Fe Pacific R. Co.* v. *Lane,* 244 U. S. 492, if the Secretary of the Interior had been a private individual, and asserted a claim unauthorized in amount for surveying public land before issuing a patent—if the situation can be imagined—no legal duty to plaintiff would have been violated. Similarly in *Ludwig* v. *Western Union Telegraph Co.,* 216 U. S. 146, the plaintiff sued to enjoin a state official from declaring that it was without authority to do business in the State—an act which no private individual could perform, and which if threatened would not involve liability.

In all these cases the principle entitling the plaintiffs to question the officials' authority is the same—the plaintiffs had a right to hold their property, or conduct their business, free from injury by public officials through acts done without lawful power and in abuse of authority. Public officials owe a duty to refrain from interfering with the property or business of the plaintiffs and from injuring them therein without authority or in abuse of it. When an act, in violation of this duty, will be the proximate cause of consequences to the plaintiff so substantial and onerous as to be comparable to injuries which the law is accustomed to note as legal damage, a cause of action arises, with the right to an injunction.

The rule is no different when the injury flows from an unauthorized use of the spending power. There the plaintiff also establishes his right to question the authority of the officer if he is—"able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." *Frothingham* v. *Mellon,* 262 U. S. 447, 488.

This petitioner has shown just such immediate threat of direct and special injury. In the present cases the Administrator has authorized, for purposes which he claims are authorized by law, the construction, as federal public works projects, under his supervision and with funds provided by him, of facilities which are intended to supplant the petitioner's, and which must do so if the loans contemplated are to be repaid. It is this action of his, in causing the construction for alleged federal purposes and with federal funds, which threatens the petitioner's business with destruction. The elimination of the petitioner from the towns is essential to the financing of the projects. The towns have already provided for this elimination. In the words of their own officials, they intend to supplant the petitioner's distribution systems.

It is equally plain that construction of each supplanting system is to be undertaken as a federal public-works project, subsidized by the Administrator. The purpose of the public-works program was to cause construction which would not otherwise take place. We refer to the official declaration of PWA that the public grants "are given to induce public bodies to undertake construction of useful works."

The fact that the impact of the injury upon the petitioner will be produced by action of the towns does not render the Administrator immune from petitioner's suit. The fact remains that he is the proximate and moving cause of the injury which it will suffer solely because of his unlawful acts in authorizing and financing these particular federal public-works projects with gifts and revenue loans, the repayment of which contemplates and requires the destruction of petitioner's business in the towns. It is well settled that where one without warrant or justification in law, induces and enables another to inflict injury on a third party the wrongdoer is liable even though the intervening party may act within his legal rights. *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, 251–252; *Walker* v. *Cronin*, 107 Mass. 555; *Thacker Coal Co.* v. *Burke*, 59 W. Va. 253; *Deon* v. *Kirby Lumber Co.*, 162 La. 671; *U. S. Fidelity & Guaranty Co.* v. *Millonas*, 206 Ala. 147; *Gibson* v. *Fidelity and Casualty Co.*, 232 Ill. 49; *Rice* v. *Manley*, 66 N. Y. 82; *Benton* v. *Pratt*, 2 Wend. 386; compare *Angle* v. *Chicago, St. Paul, M. & O. Ry. Co.*, 151 U. S. 1, 12–13, 22, 23. As the trial court concluded, ". . . the furnishing of the funds by the Government and the resulting competition are so closely connected that, if the statute under which the funds are supplied is unconstitutional, or if the officer furnishing the funds is not authorized to do so, then the plaintiffs may test those questions on the merits." Cf. *Greenwood County* v. *Duke Power Co.*, 81 F. (2d) 986, 1001, 1002; *Ho Ah Kow* v. *Nunan*, 12 Fed. Cas. No. 6,546, at p. 255.

The respondents' acts are the proximate cause of the petitioner's injury since that injury is the inevitable and contemplated result of the authorization of the projects; indeed, is essential to their accomplishment as planned. The petitioner's business must be taken from it in order to repay the Administrator.

The respondents do not and cannot argue that because the intervening acts of third persons are lawful, resulting consequences to a plaintiff cannot be legal injury. The cases cited *supra* negative any such argument. Nor can they argue that the consequences to the petitioner do not constitute legal injury because they reach the petitioner through the competition of a rival. That the injury from competition is injury recognized by the law was expressly held by this Court in *Walla Walla City* v. *Walla Walla Water Co.*, 172 U. S. 1, 11. Similarly in *Frost* v. *Corporation Commission*, 278 U. S. 515.

The respondents' argument seems to be that because the intervening act, which finally produces the injury, is legal competition, the consequences are not legal injury. Here, again, as might be expected, both authority and reason are against such an argument. See *Colorado Central Power Co.* v. *Municipal Power Development Co.*, 1 F. Supp. 961; *Campbell* v. *Arkansas-Missouri Power Co.*, 55 F. (2d) 560; cf. *Oklahoma Utilities Co.* v. *Hominy*, 2 F. Supp. 849; see also *Iowa Southern Utilities Co.* v. *Cassill*, 69 F. (2d) 703; *Gallardo* v. *Porto Rico Ry. L. & P. Co.*, 18 F. (2d) 918, and *Citizens Electric Illuminating Co.* v. *Lackawanna & W. V. Power Co.*, 255 Pa. 145.

Thus the argument that the petitioner has no standing to complain if subsequent operation of the plants by the towns is lawful falls to the ground. The petitioner can complain, regardless of the lawfulness of the operation, if the acts which cause it are in violation of law. The Administrator owes the petitioner a duty not to cause petitioner injury by acts done beyond and without authority in law. If he breaches that duty, it avails him nothing that the impact of the injury comes from operation of the plants by third parties which may be lawful. It is the unlawfulness of his acts and not of the towns' acts of which petitioner complains. This is not a suit to enjoin competition by the towns. They will be as free after as before any decree entered herein to engage in it.

This is a suit to enjoin the unlawful acts of the Administrator which cause the injury to petitioner and which breach the duty which he owes them.

II. Title II of the National Industrial Recovery Act, and the Emergency Relief Appropriation Act of 1935, are unconstitutional delegations of legislative power.

III. The loans and grants are unauthorized because the Administrator in approving them has applied a standard or criterion which Congress has not provided and could not.

IV. If the statutes be construed to authorize what has been done here, they exceed any power delegated to the Federal Government and violate the Tenth Amendment.

Messrs. Jerome N. Frank and *Solicitor General Reed*, with whom *Attorney General Cummings, Assistant Attorney General Morris*, and *Messrs. Enoch E. Ellison* and *Robert E. Sher* were on the brief, for the respondent Administrator.

Petitioner has no standing to challenge the constitutional and statutory validity of the proposed loans and grants. That conclusion, reached by the court below, accords with the decisions of every other appellate court which has passed upon the question. *Duke Power Co.* v. *Greenwood County*, 91 F. (2d) 665; *Arkansas-Missouri Power Company* v. *Kennett*, 78 F. (2d) 911 (C. C. A. 8th); *Allegan* v. *Consumers Power Co.*, 71 F. (2d) 477 (C. C. A. 6th), certiorari denied, 293 U. S. 586; *Kansas Utilities Co.* v. *Burlington*, 141 Kans. 926, petition for certiorari dismissed on motion of petitioner, 296 U. S. 658. A contrary result would establish either a new doctrine of private law, enlarging the rights of franchise holders against lawful competition, or a new doctrine of public law with respect to the action of Government officers.

The loss with which petitioners are threatened is attributable to the competition of the cities, and that competition is voluntary and is admittedly lawful under the law of Alabama and under the Fourteenth Amendment. The standing of petitioner, as the holder of non-exclusive franchises, is limited to complaints against unauthorized or illegal competition, as in *Frost* v. *Corporation Commission*, 278 U. S. 515. Cases in which a city is acting in violation of its own charter powers, such as *Campbell* v. *Arkansas-Missouri Power Co.*, 55 F. (2d) 560 (C. C. A. 8th), have no application, as was recognized by the same court in the later *Arkansas-Missouri Power Co.* case, *supra.*

The fact that the competition will be made possible by advances of funds alleged to be beyond the lawful authority of the lender cannot serve to confer additional protection upon the petitioner. Cf. *Railroad Co.* v. *Ellerman,* 105 U. S. 166; *Sprunt & Son* v. *United States,* 281 U. S. 249; *Chicago Junction Case,* 264 U. S. 258. And the fact that the lender is the United States is likewise not material. Since no legally protected interest of petitioner will be infringed, there is no occasion for the defendant to justify the proposed loans and grants by showing the authority of a valid statute. That the suit is brought against Government officers, so far from enlarging the standing of the petitioner, discloses the deficiency in its claim; for in such suits the officer is required to show valid authority only if his acts, viewed as those of a private individual, would constitute an invasion of an interest which the law would otherwise protect or which has been especially conferred by statute. *In re Ayers,* 123 U. S. 443; *Ex parte Young,* 209 U. S. 123; *Ex parte La Prade,* 289 U. S. 444. Cases holding that a defendant is answerable where he has induced another, by fraud or intimidation or with a solely malicious motive, to cause damage to a plaintiff, have no application to the cases at bar.

The proposed loans and grants are authorized by the statutes.

The statutes do not unlawfully delegate legislative power to the Administrator.

The statutory provisions are a legitimate exercise of the power to appropriate money to promote the general welfare.

There is no invasion of the reserved powers of the States.

The alleged improper purpose, motive or standard of the Administrator is irrelevant.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

These cases involve certain "loan-and-grant agreements" made by the Federal Emergency Administrator of Public Works with four municipal corporations located in the State of Alabama. The bills of complaint sought to enjoin the execution of these agreements. Each agreement contemplates the construction of an electricity-distribution system by the designated municipality, and, to that end, the purchase, by the administrator, of bonds to be issued by the municipality and secured by a first pledge of the revenues derived from the operation of the system. In No. 84 thirty and in No. 85 forty-five per cent. of the cost of the labor and materials used in the construction are to be donated outright. The authority relied upon for the loans and grants is that contained in Title II of the National Industrial Recovery Act [1] as modified and continued by the Emergency Relief Appropriation Act of 1935.[2] Title I of the former act has been declared unconstitutional by this court. *Schechter Corp.* v. *United States,* 295 U. S. 495; *Panama Refining Co.* v. *Ryan,* 293 U. S. 388. But we are here concerned not with Title I

[1] C. 90, 48 Stat. 195, 200.

[2] C. 48, 49 Stat. 115, 119.

but with Title II of the act. So far as material, that title provides:

"Sec. 202. The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: (a) Construction, repair, and improvement of public highways and park ways, public buildings, and any publicly owned instrumentalities and facilities; (b) conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, . . . ; (c) any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public; (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects; (e) any project (other than those included in the foregoing classes) of any character heretofore eligible for loans under subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, . . .

"Sec. 203. (a) With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public-works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 [by later act 45] per centum of the cost of the labor and materials employed upon such project; . . ."

The bills of complaint challenge the validity of the loans and grants on the grounds, among others, that these statutory provisions purporting to authorize such loans and grants are unconstitutional; and that, in any event, the loans and grants do not come within the statutory provisions.

The injury which petitioner will suffer, it is contended, is the loss of its business as a result of the use of the loans and grants by the municipalities in setting up and maintaining rival and competing plants; a result, it is further contended, which will be directly caused by the unlawful act of the administrator in making and consummating the loan-and-grant agreements.

The suits were brought in the United States District Court for the District of Columbia. There, the respondents, in addition to defending the validity of the action of the administrator, contended that petitioner was without legal standing to maintain the suits. After a full hearing, the district court held that petitioner had standing to challenge the administrator's action, but denied the injunctions and dismissed the bills of complaint upon the view that the statutory provisions were constitutional and that they conferred upon the administrator the power which he had exercised.

On appeal to the United States Court of Appeals for the District of Columbia, that court found it unnecessary to consider the validity of the loans and grants, and affirmed the decrees of the district court dismissing the bills on the ground that no legal or equitable right of the power company had been invaded, and the company, therefore, was without standing to challenge the validity of the administrator's acts. 91 F. (2d) 303. With that view we agree, and confine our consideration of the cases accordingly.

The trial court made elaborate findings, but for present purposes the following is all that need be stated. Petitioner is a corporation organized under the laws of Alabama, having its principal office and corporate domicile in that state. Respondent Ickes is the Administrator of the Federal Emergency Administration of Public Works, duly appointed by the President of the United States in pursuance of law. The other respondents are subordinate officers and agents of the same Emergency Administration, or officers connected with its operations.

Petitioner, under its charter, has the right to manufacture, supply and sell electrical energy throughout the State of Alabama. Among other communities served by its system are the four municipalities here involved, from each of which it has a non-exclusive franchise giving it the right to construct, maintain and operate within the municipality an electricity-distribution system. Petitioner is a taxpayer of each of the municipalities, of the counties in which they are located, and of the state, with respect to petitioner's properties and operations; and it also is a taxpayer of the United States with respect thereto.

Each of the municipalities is authorized under state law to construct and operate municipal electric plants and distribution systems, and to engage in competition with petitioner. Each is authorized to issue bonds for the purpose of financing the construction of such plants and to receive grants for that purpose; to mortgage its plant or any part of it and to pledge all or any part of the revenues derived from the operation of the plant as security for the loan.[3] In each municipality an election was held prior to the making of the loan agreements, at which it was determined by a majority of the qualified voters that the municipality should engage in the electric business. The district court further found—

"Each of the municipalities involved in this suit determined to enter into the electric distribution business of

[3] See *Oppenheim* v. *City of Florence*, 229 Ala. 50; 155 So. 859.

its own free will. There was no solicitation or coercion on the part of any of the defendants [respondents], their agents or subordinates. There was and is no conspiracy between any of the defendants and any other person, nor is there any other effort on the part of any of the defendants to, nor are their actions motivated by a desire to, cause injury or financial loss to the plaintiffs, or to regulate their rates or electric rates generally, or to foster municipal ownership of utilities.

"The expenditures under these statutes involve no purchase of, nor contract providing for, regulation by the United States. The failure of any city to apply for or receive loans or grants under those statutes will impose upon it no disadvantage or financial loss.

"The defendants have not reserved any right or power to influence or control rates to be charged by the proposed municipal power plants. . . .

"Neither the United States nor any of the defendants has reserved any right or power under the existing contracts, or in any other way, to require any of the municipalities to eliminate competition or to designate the person or agency from whom the municipality must purchase its power. . . .

"Neither the United States nor any of the defendants has any power to control the operation of the projects after construction is completed. . . .

"Each of the projects herein involved is a part of a program of national scope, is designed to relieve unemployment, and promotes the general welfare of the United States."

These findings were made, after hearing, by the district judge upon undisputed or conflicting evidence. The findings were not questioned by the court below; and since they are not without substantial support in the evidence, we accept them here as unassailable. *Davis* v. *Schwartz,* 155 U. S. 631, 636–637; *Adamson* v. *Gilliland,* 242 U. S. 350, 353.

It, therefore, appears that each of the municipalities in question has authority to construct and operate its proposed plant and distribution system in competition with petitioner, and to borrow money, issue bonds and receive grants for that purpose; that it determined to do so of its own free will, without solicitation or coercion; that there was no conspiracy between any of the respondents and any other person, or any effort or action motivated by a desire to cause injury or financial loss to petitioner, or any purpose to regulate rates or foster municipal ownership of utilities. It further appears that neither the United States nor any of the respondents has reserved any right or power to require an elimination of competition or designate any agency from which the municipality must purchase its power. Each municipality is left entirely free from federal control or direction in respect of the management and control of its plant and business. In short, the case for petitioner comes down to the contention that consummation of the loan-and-grant agreements should be enjoined on the sole and detached ground that the administrator lacks constitutional and statutory authority to make them, and that the resulting moneys, which the municipalities have clear authority to take, will be used by the municipalities in lawful, albeit destructive, competition with petitioner.

First. Unless a different conclusion is required from the mere fact that petitioner will sustain financial loss by reason of the lawful competition which will result from the use by the municipalities of the proposed loans and grants, it is clear that petitioner has no such interest and will sustain no such legal injury as enables it to maintain the present suits. Petitioner alleges that it is a taxpayer; but the interest of a taxpayer in the moneys of the federal treasury furnishes no basis for an appeal to the preventive powers of a court of equity. *Massachusetts* v. *Mellon,* 262 U. S. 447, 486 *et seq.* The principle established by the case just cited is that the courts have no power to consider in isolation and annul an act of Congress on the ground that it is unconstitutional; but may consider that question "only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act." The term "direct injury" is there used in its legal sense, as meaning a wrong which directly results in the violation of a legal right. "An injury, legally speaking, consists of a wrong done to a person, or, in other words, a violation of his right. It is an ancient maxim, that a damage to one, without an injury in this sense, (*damnum absque injuria*), does not lay the foundation of an action; because, if the act complained of does not violate any of his legal rights, it is obvious, that he has no cause to complain. . . . Want of right and want of remedy are justly said to be reciprocal. Where therefore there has been a violation of a right, the person injured is entitled to an action." *Parker* v. *Griswold*, 17 Conn. 288, 302–303. The converse is equally true, that where, although there is damage, there is no violation of a right no action can be maintained.

Second. The only pertinent inquiry, then, is what enforceable legal right of petitioner do the alleged wrongful agreements invade or threaten? If conspiracy or fraud or malice or coercion were involved a different case would be presented, but in their absence, plainly enough, the *mere* consummation of the loans and grants will not constitute an actionable wrong. Nor will the subsequent application by the municipalities of the moneys derived therefrom give rise to an actionable wrong, since such application, being lawful, will invade no legal right of petitioner. The claim that petitioner will be injured, perhaps ruined, by the competition of the municipalities brought about by the use of the moneys, therefore, presents a clear case of *damnum absque injuria*. Stated in other words, these municipalities have the right under state law to engage in the business in competition with petitioner, since it has been given no exclusive franchise. If its business be curtailed or destroyed by the operations of the municipalities, it will be by lawful competition from which no legal wrong results.

What petitioner anticipates, we emphasize, is damage to something it does not possess—namely, a right to be immune from lawful municipal competition. No other claim of right is involved. It is, in principle, as though an unauthorized loan were about to be made to enable the borrower to purchase a piece of property in respect of which he had a right, equally with a prospective complainant, to become the buyer. While the loan might frustrate complainant's hopes of a profitable investment, it would not violate any legal right; and he would have no standing to ask the aid of a court to stop the loan. What difference, in real substance, is there between the case supposed and the one in hand?

The ultimate question which, therefore, emerges is one of great breadth. Can anyone who will suffer injurious consequences from the lawful use of money about to be unlawfully loaned maintain a suit to enjoin the loan? An affirmative answer would produce novel and startling results. And that question suggests another: Should the loan be consummated, may such a one sue for damages? If so, upon what ground may he sue either the person making the loan or the person receiving it? Considered apart, the lender owes the sufferer no enforcible duty to refrain from making the unauthorized loan; and the borrower owes him no obligation to refrain from using the proceeds in any lawful way the borrower may choose. If such a suit can be maintained, similar suits by innumerable persons are likewise admissible to determine whether money is being loaned without lawful authority for uses which, although hurtful to the complainants, are perfectly lawful. The supposition opens a vista of litigation hitherto unrevealed.

John Doe, let us suppose, is engaged in operating a grocery store. Richard Roe, desiring to open a rival and competing establishment, seeks a loan from a manufacturing concern which, under its charter, is without authority to make the loan. The loan, if made, will be *ultra vires*. The state or a stockholder of the corporation, perhaps a creditor in some circumstances, may, upon that ground, enjoin the loan. But may it be enjoined at the suit of John Doe, a stranger to the corporation, because the lawful use of the money will prove injurious to him and this result is foreseen and expected both by the lender and the borrower, Richard Roe? Certainly not, unless we are prepared to lay down the general rule that A, who will suffer damage from the lawful act of B, and who plainly will have no case against B, may nevertheless invoke judicial aid to restrain a third party, acting without authority, from furnishing means which will enable B to do what the law permits him to do. Such a rule would be opposed to sound reason, as we have already tried to show, and cannot be accepted.

If there are conditions under which two distinct transactions, neither of which, apart, constitutes a judicially remediable wrong, may be so related to one another as to afford a basis for judicial relief, such conditions are not to be found in the circumstances of the present case.

What we have now said finds ample support in the decided cases. Among the decisions of this court, and directly in point, is *Railroad Co.* v. *Ellerman,* 105 U. S. 166. In that case, the railroad company was authorized by its charter, among other things, to obtain and afterwards manage, use and enjoy, wharves and the appurtenances thereto "in connection with its railroads." A Louisiana statute conferred upon the railroad the power to obtain and thereafter to own, maintain and use, suitable wharves, etc., "connected with and incidental to said railroad." Pursuant to this authority, the railroad company acquired property which it used as a wharf and which, although limited by the statute and its charter to use for railroad purposes, it leased to certain persons for the mooring of vessels and the loading and unloading of cargoes upon and from all vessels of a kind designated. Ellerman operated certain public wharves under a contract with the city of New Orleans giving him the right to collect revenues derived therefrom. He brought suit to enjoin the execution of the lease of the railroad wharf. This court held that he was without legal standing to maintain the suit—his only interest being to prevent competition with himself as a wharfinger, which the more extensive and challenged use by the lessees of the railroad wharf would create, and his claim for relief resting only upon the allegation that the use proposed by the lease was beyond the corporate power of the railroad company to grant. "But if the competition in itself, however injurious," we said, pp. 173–174, "is not a wrong of which he could complain against a natural person, being the riparian proprietor, how does it become so merely because the author of it is a corporation acting *ultra vires?* The damage is attributable to the competition, and to that alone. But the competition is not illegal. It is not unlawful for any one to compete with the company, although the latter may not be authorized to engage in the same business. The legal interest which qualifies a complainant other than the State itself to sue in such a case is a pecuniary interest in preventing the defendant from doing an act where the injury alleged flows from its quality and character as a breach of some legal or equitable duty. A stockholder of the company has such an interest in restraining it within the limits of the enterprise for which it was formed, because that is to enforce his contract of membership. The State has a legal interest in preventing the usurpation and perversion of its franchises, because it is a trustee of its powers for uses strictly public. In these questions the appellee has no interest, and he cannot raise them in order, under that cover, to create and protect a monopoly which the law does not give him. The only injury of which he can be heard in a judicial tribunal to complain is the invasion of some legal or equitable right. If he asserts that the competition of the railroad company damages him, the answer is, that it does not abridge or impair any such right. If he alleges that the railroad company is acting beyond the warrant of the law, the answer is, that a violation of its charter does not of itself injuriously affect any of his rights. The company is not shown to owe him any duty which it has not performed." Supporting cases are cited. See, also, *U. S. ex rel. New York Warehouse, W. & T. Assn.* v. *Dern,* 68 F. (2d) 773. Compare *Edward Hines Trustees* v. *United States,* 263 U. S. 143, 148; *Alexander Sprunt & Son* v. *United States,* 281 U. S. 249, 256–257; *Milwaukee Horse & Cow Comm'n Co.* v. *Hill,* 207 Wis. 420, 423, 430–432; 241 N. W. 364.

The *Chicago Junction Case,* 264 U. S. 258, is not to the contrary. There, suit was brought by certain railroad companies to set aside an order of the Interstate Commerce Commission authorizing a competing company to acquire a terminal road. Answering the contention that complainants were without the legal interest necessary to entitle them to challenge the order, this court held that the right to sue arose in virtue of a special interest recognized by certain provisions contained in Transportation Act, 1920, and under § 212 of the Judicial Code which gave any party to a proceeding before the commission the right to become a party to any suit wherein the validity of an order made in the proceeding is involved. In this view, the *Ellerman* case was thought to be inapplicable. A reading of the case in connection with the dissenting opinion shows very clearly that, but for express statutory provision creating a different rule, the decision in the *Ellerman* case would have been controlling.

The precise question here involved was decided, in accordance with the view we have expressed, in *Duke Power Co.* v. *Greenwood County*, 91 F. (2d) 665, 676; same case, 81 F. (2d) 986, 997. Compare *Arkansas-Missouri Power Co.* v. *Kennett*, 78 F. (2d) 911. See, also, *Allegan* v. *Consumers' Power Co.*, 71 F. (2d) 477. The *Greenwood County* case, *supra*, is now pending in this court upon certiorari, and will be determined upon the authority of our present decision.

Frost v. *Corporation Commission*, 278 U. S. 515, relied upon by petitioner, presents an altogether different situation. Appellant there owned a cotton-ginning business in the city of Durant, Oklahoma, for the operation of which he had a license from the corporation commission. The law of Oklahoma provided that no gin should be operated without a license from the commission, which could be obtained only upon specified conditions. We held that such a license was a franchise constituting a property right within the protection of the Fourteenth Amendment; and that while the acquisition of the franchise did not preclude the state from making similar valid grants to others, it was exclusive against an attempt to operate a competing gin without a permit or under a void permit. The Durant Co-operative Gin Company sought to obtain a permit from the commission which, for reasons stated in our opinion, we held would be void and a clear invasion of Frost's property rights. We concluded that a legal right of Frost to be free from such competition would be invaded by one not having a valid franchise to compete, and sustained Frost's right to an injunction against the commission and the Durant company. See *Corporation Commission* v. *Lowe*, 281 U. S. 431, 435. The difference between the *Frost* case and this is fundamental; for the competition contemplated there was unlawful while that of the municipalities contemplated here is entirely lawful.

We deem it unnecessary to review the many other cases cited by petitioner where suits against officials have been sustained. An examination of them will disclose the presence of fraud, coercion, malice, conspiracy, or some other element or condition of controlling force—none of which, as shown by the findings which we have accepted as unassailable, exists in the present case.

Decrees affirmed.

MR. JUSTICE BLACK concurs in the result.

DUKE POWER CO. ET AL. *v.* GREENWOOD COUNTY ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 397. Argued December 7, 8, 1937.—Decided January 3, 1938.

Decided upon the authority of *Alabama Power Co.* v. *Ickes, ante,* p. 464.

91 F. (2d) 665, affirmed.

CERTIORARI, *post,* p. 675, to review a decree affirming the dismissal, 19 F. Supp. 932, of a bill to enjoin performance of a contract like those involved in the two cases last preceding. For an earlier phase of this litigation, see 299 U. S. 259.

Mr. W. S. O'B. Robinson, Jr., with whom *Messrs. Newton D. Baker, R. T. Jackson, W. R. Perkins, H. J. Haynsworth, J. H. Marion* and *W. B. McGuire, Jr.* were on the brief, for petitioners.

The evidence shows that the project was included in the comprehensive program of public works and that